(22,652)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 280.

THE GUARDIAN ASSURANCE COMPANY OF LONDON, LIMITED, PLAINTIFF IN ERROR,

vs.

DOMINGO QUINTANA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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1 In the District Court of the United States for Porto Rico.

At a Stated Term of the District Court of the United States for Porto Rico, begun on the second Monday of October, being the 10th day of the month, in the year A. D. 1910.

Present the Honorable John J. Jenkins, Judge.

Among the proceedings had was the rendition of a judgment in the following case, to-wit:

DOMINGO QUINTANA, Plaintiff,

vs.

THE "GUARDIAN ASSURANCE COMPANY," LIMITED, OF LONDON, Defendant.

Be it remembered that heretofore, to wit, on the 8th day of September, 1910, there was filed in the Clerk's Office of said Court a certain complaint, which said complaint is as follows, to wit:

Complaint.

Now comes the plaintiff herein, Domingo Quintana by his attorneys, Hord & Scoville, and complaining of the defendant, the Guardian Assurance Company, Limited, of London, for cause of action alleges:

First. That the plaintiff is a citizen of Porto Rico and a resident thereof, and that the defendant is a corporation duly organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, authorized to do business in Porto Rico.

Second. That about the month of April, 1910, plaintiff bought from the Compania Agricola vasca de Yabucoa, a certain stock of merchandise and provisions, situated on the farm "Rosario" barrio Calabasa, Municipal jurisdiction of Yabucoa, Porto Rico,

2 upon which stock of goods and merchandise there existed on the date of said purchase, a policy of insurance against loss by fire, issued and executed by the defendant company in the sum of Four Thousand ($4,000.00) Dollars, being policy number 3,889,-884.

Third. That thereafter plaintiff increased and added to said stock of merchandise and provisions so bought as aforesaid and made the same a wholesale as well as a retail establishment, the value of said stock of merchandise and provisions so increased as aforesaid, being far in excess of Seven Thousand ($7,000.00) Dollars.

Fourth. That on or about the 24th day of June, in the year 1910, said policy of insurance was transferred by said Compania Agricola Vasca de Yabucoa to the plaintiff with the authority and consent of the defendant company and that on said date the defendant issued another policy of insurance against loss by fire, number 4,840,685, in the sum of Three Thousand ($3,000.00) Dollars to the plaintiff

on said stock of merchandise and provisions, including liquors for wholesale.

Fifth. That on or about the 25th day of July, 1910, said stock of provisions, merchandise and liquors was totally destroyed by fire without fault on part of the plaintiff and while said policies were still in force.

Sixth. That at the date of the destruction by fire of the said stock of goods and merchandise so insured by the defendant as aforesaid, the value of the same was far in excess of seven thousand ($7,000.00) Dollars.

Seventh. That under and by virtue of the insurance policies as aforesaid, the defendant became indebted to the plaintiff upon the destruction of said stock of merchandise by fire in the sum of Seven Thousand ($7,000.00) Dollars. Plaintiff gave notice to the defendant of the loss suffered by said fire, in accordance with the terms of said policy, and filed with its agents in San Juan, Porto Rico, a detailed statement of the goods and merchandise lost in said fire,
3 in so far as it was possible to do, but notwithstanding the proofs that the plaintiff has presented to said defendant as to his loss and the repeated demands that he has made upon said defendant and its agents for the payment of said sum of money, said defendant has failed and refused to pay the same and has not paid the same nor any part thereof.

Wherefore, plaintiff prays judgment against the defendant for the sum of Seven Thousand ($7,000.00) Dollars, together with interest thereon from this date and the costs of this suit.

(Signed) HORD & SCOVILLE,
Attorneys for Plaintiff.

Answer.

Filed October 14, 1910.

DOMINGO QUINTANA, Plaintiff,
vs.
THE GUARDIAN ASSURANCE COMPANY, LTD., OF LONDON, Defendant.

Answer.

The above named defendant, The Guardian Assurance Company, Ltd., of London, by its attorney, Francis H. Dexter, for answer to the complaint herein filed, says:

I.

It admits the allegations of Paragraphs "First" and "Second" of the said Complaint.

II.

It admits the allegations of paragraph "Fourth" of the said Complaint.

III.

Defendant denies each and every other allegation contained in the said Complaint except as herein admitted, modified or explained.

4 IV.

Defendant says that is is true that on the twenty-fifth day of July, 1910, a fire occurred in the house or store-room occupied by plaintiff in said "barrio" of Calabasa, District of Yabucoa, and that there was burned and destroyed by fire certain provisions covered by the policies of Insurance issued to plaintiff by the defendant company and described in the Complaint, but defendant avers and alleges, as it is reliably informed and as it verily believes, that the said fire was intentional and that it originated by the connivance and design of the plaintiff and those acting under his directions and instructions.

V.

Defendant further avers that at the time of the said loss, the stock of goods so destroyed did not exceed in value the sum of Three Thousand ($3,000) Dollars, and that the action of plaintiff in claiming of defendant the sum of Seven Thousand ($7,000) Dollars is part of a fraudulent and unlawful scheme to recover the total amount on said policies, when, in truth and in fact, the said fire was caused by the connivance and direction of plaintiff and the goods destroyed were worth only the sum above indicated.

VI.

Defendant further avers that plaintiff has failed and refused to deliver to it within the period of fifteen days from the date of said fire, a detailed statement of the loss suffered, setting forth in detail the character and value of the goods destroyed and verified by affidavit, all as required by Article X of the said Policies of Insurance; and defendants aver that the said Article has not been in any manner by defendant or its employees waived or modified and that it has constantly since the said fire demanded such statement.

VII.

Defendant further states that the Policy for Three Thousand ($3,000) Dollars issued on the twenty-fourth day of June,
5 1910, covered a stock of dry goods and provisions of all classes, including wholesole stocks of liquor in the possession of plaintiff as detailed, and defendant avers that at the time of the issuance of the said policy and thereafter and until the said fire, the plaintiff was engaged, without the knowledge or consent of defendant, in the distillation, manufacture and preparation of various alcoholic liquors upon the premises where the rest of the insured stock was kept. Defendant says that this constituted a false and misleading representation by plaintiff of the character of the property insured and of the risk assumed by the defendant company,—the risk being greater in the case of the manufacture and preparation of

alcoholic liquors than for the purchase and sale of the same in closed vessels.

Wherefore defendant prays judgment in its behalf with its costs herein most wrongfully expended.

(Signed) F. H. DEXTER,
Attorney for Defendant.

Service of a copy of the foregoing Answer acknowledged this fourteenth day of October, Nineteen hundred and ten.

(Signed) HORD & SCOVILLE.
M. A. B.

Motion for Order to Compel Production of Books.

Filed November 23, 1910.

DOMINGO QUINTANA, Plaintiff,
vs.
THE GUARDIAN LIFE ASSURANCE COMPANY, LIMITED, Defendant.

Defendant moves the Court for an Order upon the plaintiff requiring him to produce at the trial of this cause and also to permit at a reasonable time prior thereto an inspection of the letter-copy-book or copy-books kept by the plaintiff during the year 1910 in so far as they contain copies of the following letters and telegrams, to wit:

6 Letter dated May 28, 1910, addressed by plaintiff to Don Angel Suarez, San Juan, P. R.

Letter dated May 25 or 26, 1910, addressed to Don Antonio Garcia, Cintron, Yabucoa;

Letter dated May 25 or 26, 1910 addressed to Sres. Pons & Company, San Juan.

Letter dated May 26, 1910 addressed to Don J. J. Lopez, San Juan, P. R.

Telegram of June 2, 1910 addressed to Moreno, San Juan, relating to the shipment of 500 quintals of salt.

Copy of "borderó" appearing on page 193 of letter-book as of date June 13, 1910;

Letter dated June 16, 1910 addressed to Pons & Co., San Juan.

Letter dated June 27 1910, addressed to Sucesores de Frontera & Co., Ponce, P. R.

Letter dated June 28, 1910, addressed to Porto Rico American Tobacco Company, San Juan.

Letter dated June 28, 1910 addressed to Sucesores de Frontera & Co., Mayaguez, P. R.

Letter dated July 1, 1910 addressed to Pons & Co., San Juan.

Letter dated July 7, 1910 addressed to Don Aurelio Berrios & Co., San Juan, P. R.

Letter dated July 12, 1910 addressed to Francisco Gonzalez, Humacao.

Letter dated July 15, 1910 addressed to Sres. Gandina, Castañez & Co., San Juan, P. R.

Letter dated July 20, 1910 addressed to Piza Hnos., San Juan.
Telegrams dated July 25, 1910 addressed to Domingo Quintana, Hotel Comercio, San Juan.

Defendant states that the contents of the foregoing letters, telegrams and documents are pertinent and material to the issues in this cause and defendant requires them upon the trial hereof in order that justice may be done. Defendant, continuing, says that it only recently obtained knowledge of the said papers and documents.

Defendant further says that the said papers and documents will establish the insolvent condition of the plaintiff at the time of the fire in question and show the significant promises made by him to his creditors to discharge his indebtedness to them at a time
7 coincident with the burning of his establishment.

Defendant further moves the Court that plaintiff be compelled to produce at the trial and submit for inspection of attorney for defendant prior thereto, books of account kept by him from March first, 1910 to the present time relating to the store known as the "Vasca"—destroyed by fire.

(Signed) F. H. DEXTER,
Attorney for Defendant.

To Messrs. Hord & Scoville, Attorneys for Plaintiff:

You are hereby notified that the foregoing motion has been filed in the above entitled case and that the same will be called for hearing before the Court at 2 o'clock p. m. this day for an order as prayed.

You are further notified that upon failure to produce the book or books and copies desired, defendant will avail itself of the remedies authorized by law to enable it to submit to the Court and jury the contents of the letters and telegrams hereinbefore referred to.

San Juan, P. R., November 23, 1910.

(Signed) F. H. DEXTER,
Attorney for Defendant.

Copy Received at 11:20 A. M., Oct. 23, 1910.
(Signed) HORD & SCOVILLE.

8 *Order to Allow Inspection of Papers.*

Filed November 23, 1910.

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE CO., LIMITED.

On this 23rd day of November, 1910, the defendant presents its motion for an order upon the plaintiff requiring him to produce at the trial of this cause, and also to permit at a reasonable time prior thereto an inspection of certain books and papers. Plaintiff appeared by his attorneys Messrs. Hord & Scoville.

Upon consideration of the motion and of the arguments of counsel in support of and in opposition thereto, the court grants the same, and hereby orders the plaintiff to produce at the trial of this cause the letter-copy-book or copy-books kept by him during the year 1910 in so far as they contain copies of the following letters and telegrams, to wit:

Letter dated May 28, 1910, addressed by plaintiff to Don Angel Suarez, San Juan, P. R.

Letter dated May 25 or 26, 1910, addressed to Don Antonio Garcia, Cintron, Yabucoa;

Letter dated May 25 or 26, 1910, addressed to Sres. Pons & Company, San Juan.

Letter dated May 26, 1910, addressed to Don J. J. Lopez, San Juan, P. R.

Telegram of June 2, 1910, addressed to Moreno, San Juan, relating to the shipment of 500 quintals of salt.

Copy of "border6" appearing on page 193 of letter-book as of date June 13, 1910.

Letter dated June 16, 1910, addressed to Pons & Co., San Juan.

Letter dated June 27, 1910, addressed to Sucesores de Frontera & Company, Ponce, P. R.

Letter dated June 28, 1910, addressed to Porto Rico American Tobacco Company, San Juan.

Letter dated June 28, 1910, addressed to Sucesores de Frontera & Company, Mayaguez, P. R.

9 Letter dated July 1, 1910, addressed to Pons & Co., San Juan.

Letter dated July 7, 1910, addressed to Don Aurelio Berrios & Co., San Juan, P. R.

Letter dated July 12, 1910, addressed to Francisco Gonzalez, Humacao.

Letter dated July 15, 1910, addressed to Sres. Gandina, Casteñez & Co., San Juan, P. R.

Letter dated July 20, 1910, addressed to Piza Hnos., San Juan.

Telegrams dated July 25, 1910, addressed to Domingo Quintana, Hotel Comercio, San Juan.

The court further orders plaintiff to produce at the trial all books of account kept by him from March 1, 1910, to the present time relating to the store known as the "Vasca," destroyed by fire.

It is further ordered that attorney for defendant be permitted to inspect all of the said books and documents before the trial of this cause.

November 23, 1910.

(Signed) JOHN J. JENKINS, *Judge.*

Journal Entry of November 25, 1910.

734. Law.

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE CO. OF LONDON.

This cause comes on for trial, and comes the plaintiff in his own proper person and by his counsel Messrs. Hord & Scoville, and comes the defendant by its representative, Frederick Schomburg, and by its attorney Francis H. Dexter, and comes a jury, that is to say:

Emilio Chevermont,	E. A. Gildemiester,
Antonio Hernandez,	L. G. McGuigan,
N. L. Reed,	E. P. Hodges,
E. Gatell,	Justo Barros,
F. M. Pennock,	L. P. Le Hardy,
J. R. Latimer, Sr.,	Julio Marero,

twelve good and lawful men chosen from the body of the
10 District of Porto Rico, duly sworn, examined, and impanelled to try the issues joined between the parties. The witnesses for both sides are thereupon called, duly sworn, and placed under the exclusion rule, and the trial is proceeded with. And not being finished at the adjournment hour, the further hearing of the same is continued over until tomorrow morning at 9 o'clock A. M.

Journal Entry, November 26, 1910.

734. Law.

DOMINGO QUINTANA
vs.
GUARDIAN ASSURANCE CO.

Come the parties with their counsel as on yesterday. The jury is called and all found present and the trial of the cause is proceeded with. And at the conclusion of the testimony of the witnesses for the parties, the further hearing of the cause is continued over until the 28th instant at 9 o'clock A. M.

11 In the District Court of the United States for Porto Rico.

Law. No. 734.

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE COMPANY, LIMITED, OF LONDON.

The Court's Instructions to the Jury.

The plaintiff in this action seeks to recover from the defendant the sum of $7,000.00 and interest, for insurance paid for by the plaintiff and furnished by the defendant, and the claim of the plaintiff is that in the month of March, 1910, the plaintiff purchased a stock of goods upon which there was a policy of insurance issued by the defendant company for $4,000.00, and that at the time of the purchase and sale, this policy of insurance was transferred to the plaintiff.

That plaintiff increased his stock of goods and obtained from the defendant an additional policy of insurance for $3,000 and converted the business into both wholesale and retail.

That on the 25th of July, 1910, both policies were in force and at that time the combined stock of goods so insured was worth in excess of $7,000.00, and that the entire stock of goods covered by the insurance was destroyed by fire.

And plaintiff further claims that before bringing this action, he had fully performed all of the conditions of the contracts upon his part to be performed.

Defendant on its part avers and alleges that it is reliably informed, and as it verily believes, that the said fire was intentional, and that it originated by the connivance and design of the plaintiff and those acting under his directions or instructions.

12 Now, upon that issue, upon that defence, the defendant company has the affirmative and must satisfy you by a preponderance of the evidence that this plaintiff, either directly or indirectly, caused the destruction of the stock of goods by fire in order to entitle it to the defence it has set up.

Defendant further avers and alleges that at the time of the loss, the stock did not exceed in value the sum of $3,000.

If you find from the evidence that this plaintiff, either directly or indirectly, caused the destruction of the stock of goods by fire, your verdict will be for the defendant and you will have nothing further to do in the case, but if you find from the evidence that the plaintiff did not, either directly or indirectly, cause the destruction of the stock of goods by fire, then your verdict will be for the plaintiff for the value of the stock of goods at the time of the fire, not to exceed the sum of $7,000.00, and interest on the value so found by you at the rate of six per cent per annum from September 8, 1910.

The testimony of Mr. Schomberg, the agent of the defendant company, that after making his investigation for the company, it offered to pay to plaintiff $3,500.00 or $4,000.00, can be considered

by you only in contradiction of his testimony and in connection with the allegation of incendiarism, and only for the purpose for which it was offered, that is, to show that the defendant company did not, after making its investigation, believe that the fire was of incendiary origin. The jury cannot consider said testimony for any other purpose whatsoever, and you are instructed that it cannot be considered to show an offer of compromise, as that would not be competent testimony.

13 *Stenographer's Certificate.*

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, hereby certify that the foregoing document, consisting of two typewritten pages, is a true and correct transcript of the Court's instructions to the jury in the case of Domingo Quintana versus The Guardian Assurance Company, Limited, of London, given upon the first trial thereof in the above entitled court in the month of November, 1910.

ARTHUR J. HARVEY,
Official Stenographer of the District Court of the United States for Porto Rico.

14 *Journal Entry of November* 28, 1910.

734. Law.

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE CO.

The trial of this cause is proceeded with as on yesterday, the jury being called and all found present. Thereupon counsel for the parties make their arguments to the jury, the court delivers to them its instructions, and they retire to their quarters in charge of the marshal, to consider of their verdict.

And thereafter, at 5:15 P. M., this same day the jury are called into court and asked if there is any probability that they will agree upon a verdict. And in reply they, by their foreman, state that there is not. The court thereupon directs that they again retire to their quarters for further consideration of their verdict.

Journal Entry of November 29, 1910.

734. Law.

DOMINGO QUINTANA
vs.
GUARDIAN ASSURANCE CO.

The jury in the above entitled cause come into court and are asked if there is any probability that they will agree upon a verdict,

and they by their foreman answer that there is not, and it appearing that said jury have been out since ten A. M. of the 28th instant, considering of their verdict, the court thereupon excuses them from further consideration of the cause. And it is directed that the said cause be placed upon the trial calendar.

15 *Journal Entry of December 2, 1910.*

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE CO.

The trial of this cause is set for 10 A. M. December 3, 1910.

Motion of Defendant for Reasonable Time within Which to Prepare for Retrial of Above Case.

Filed December 3, 1910.

DOMINGO QUINTANA, Plaintiff,
vs.
THE GUARDIAN ASSURANCE COMPANY, Defendant.

Motion of Defendant to be Given a Reasonable Time within Which to Prepare for the Retrial of the Above Cause.

Defendant, the Guardian Assurance Company, represents to the Court that this cause became of issue on the fourteenth day of October, 1910, by the filing of an answer herein by defendant and that the regular October term, 1910 of this Court began on the Seventh day of November, 1910.

A jury being impanelled for the trial of causes at the said October term, this cause came on for hearing on the twenty-fifth day of November, and was not concluded until the twenty-ninth day of November, when the jury therein was discharged by this Court because it failed to agree upon a verdict.

Neither at the time of discharging the said jury nor until the morning of December 2, was any intimation or order made by the Court as to when this case would be retried.

Defendant avers that the uniform practice in this Court since the establishment thereof in 1900 has been that civil cases in which juries have failed to agree have been continued to the following Term, when a new and different jury would be empanelled for the trial thereof. The records of this Court will disclose such practice, which has been regarded by the Court and the Bar as equiva-

16 lent to a standing rule of Court.

Defendant represents that because of the matters and facts hereinabove just set forth, its attorney—Francis H. Dexter—dismissed its witnesses, nearly all of whom are working men residing in or near the town of Yaburoa, which is fifty miles distant from the City of San Juan, where this Court is held and between

which there is no railroad communication. The only communication possible for such witnesses and permitted by the legal mileage paid to witnesses is by means of vehicles hauled by horses.

Defendant says that the witnesses who testified at the former trial and whose testimony is required by defendant upon a retrial of this cause, are the following:

Florencio Alicea	Yabucoa
Evangelio Sanchez	"
Domingo Lebron	"
Eulalio Santiago	"
Juan de la Cruz	"
José Valladares	"
Felipe Arana	"
Agapito Vilaro	"
Gregorio Sagastibelati	"

Defendant represents that there appears on the docket of this Court the following cases at issue and for trial at this Term, which cases continue in the order hereinafter set forth the above entitled case of Domingo Quintana vs. The Guardian Assurance Company and which, in accordance with the uniform practice of this Court, should be tried before the retrial of this case.

The said cases are:

No. 553. Pedro J. Besosa vs. Generosa Candina, Breach of Contract, damages claimed $15,000.

No. 687. Rogelio Viso Lorenzo vs. The Porto Rico Sugar Co., Violation of Contract and damages issuing out of the same—Amount claimed, $5,000, Counsel's fees and costs.

No. 740. Eusebio Mojica vs. Mariano Gonzalez Lajo—Action to recover value of lands, rents and profits; Amount claimed $3,500 and costs.

17 No. 717. Marthina Cockrell vs. Wenceslao Borda, Jun'r, et al. Action to recover on contract for professional services. Amount claim- $3,005 and costs.

No. 651. Roy Brooks vs. Central Saint Jean. Personal injury. Damages claimed $7,000 and costs. (In this case there was a trial and disagreement of the jury at the last term.)

679. Bautisto Viso Lorenzo vs. The Porto Rico Sugar Co. Action to recover on contract. Amount claimed $1,840.27 and costs.

No. 680. Bautisto Viso Lorenzo vs. The Porto Rico Sugar Co. Action to recover for damages to the crop. Amount claimed $4,500 and costs.

No. 702. Manuel Ruiz vs. The American Railroad Company of Porto Rico. Libel and slander. Damages claimed, $10,000 and costs.

No. 711. Domingo Abad del Rosario et al. vs. Antonio Pira et al. Sought to recover real property and damages. $10,000 and costs.

No. 732. Juana Caban vs. The American Railroad Company of Porto Rico. Action for damages for death of husband of plaintiff. Amount claimed $10,000 and costs.

No. 741. Jovita Olivo vs. American Railroad Company of Porto

Rico. Action for damages for death of minor child of plaintiff. Amount claimed $15,000 and costs.

Defendant represents that on December 1st last at about 3 o'clock p. m., its attorney, Francis H. Dexter, received a visit at his office from Mr. F. H. Hord, one of the attorneys for the plaintiff, who asked defendant's attorney if defendant's agent in Porto Rico, Mr. Frederick Schomberg, was disposed to pay in full the policies of insurance sued on in this action. Defendant's attorney Dexter replied to the said Hord that, so far as he knew, it was not the intention or purpose of his client to pay the said policies. Thereupon, the said Hord stated to Defendant's attorney Dexter that he would ask for a setting of the case for retrial immediately, further remarking that defendant's attorney Dexter should be present in Court the following morning, as he would ask for such setting. Defendant's attorney replied that he was at that moment leaving for Coamo
18 Springs to visit his wife and a sick child who had been for some weeks at that place and that while he, the said Dexter, expected to return the following day, he was not certain that he would be able to return in time to attend the Court. He requested the said Hord to make a motion in due form as required by Civil Procedure and the practice governing such matters in the Courts of Porto Rico.

Defendant represents that defendant's attorney, the said Dexter, departed for Coamo Springs at about a quarter after three of the same afternoon of December 1st and did not return to San Juan until about some time the following December 2nd; that being in his office between 3:30 and 4 o'clock, he was given a telephonic call by Mr. A. J. Harvey, the stenographer of the Court, who spoke to him concerning the preparation of the transcript of the testimony of the witnesses given at the former trial; and in the course of the conversation the said Harvey notified the said Dexter that this case was set for trial for December 3 at 9 a. m.

Defendant represents that its said attorney Dexter visited the Court immediately and learned that the attorney for plaintiff, the said Hord, had on the morning and in the absence of defendant's attorney Dexter requested a trial of this cause on the following day and that the Court had so ordered.

Defendant represents that the information received by its attorney Dexter late in the afternoon of the second instant, was the first notice that it or its said attorney had from the Court that this case was to be retried at this present Term and at so early a date.

Defendant says that it is impossible to obtain the presence of its witnesses at the trial of this cause on the third of December,
19 because of the distance and of the difficulty that would naturally ensue in finding its witnesses, who are scattered on various farms and in various settlements about the town of Yabucoa.

Defendant further states that on the second day after the trial of this cause, its attorney ordered from the official stenographer of this Court a complete transcript of all the testimony given on the trial hereof for the purpose of preparing for a retrial, but that the said stenographer has not yet been able to complete said transcript.

Defendant says that if it be forced to a trial on the day so fixed as aforesaid by the Court, it will be deprived of the opportunity to make a defense in this cause and that it will be denies a fair and impartial trial.

Defendant prays therefore, under the circumstances, that if the Court should, in the exercise of its discretion, see fit to depart from the rule and practice of long standing, above referred to, and require this cause to be tried at or during the present Term, that it shall give to the defendant at least five days within which to bring its witnesses to the trial.

Defendant further represents that in the ordinary course, the cases above set forth, the trial of which was set to follow the first trial of this case, will consume at least a week in their trial and submission to the jury.

GUARDIAN ASSURANCE COMPANY,
By F. H. DEXTER, *Attorney.*

Francis H. Dexter, being sworn, upon his oath says that the matters and facts above set forth are true as he veritably believes.

(Signed) F. H. DEXTER.

Subscribed and sworn to before me this Third day of December, 1910.

RAFAEL GUILLERMETY, *Clerk,*
By N. V. COLBURN, *Deputy.*

20 *Journal Entry of December* 3, 1910.

734. Law.

DOMINGO QUINTANA
vs.
GUARDIAN ASSURANCE CO.

This case is again called for trial, the jury not having been able to agree and report in the previous trial. And thereupon F. H. Dexter, attorney for the defendant company, begs leave to file a motion asking for a postponement of the trial on account of the short time at his disposal to prepare the defense in the case. The motion is heard and the court being fully advised in the premises overrules the same, to which ruling of the court the defendant duly objects and excepts.

A jury then comes, who are duly examined, sworn and impanelled to try the cause, that is to say: F. D. Amador, Nathaniel Pasarell, P. M. McCormick, M. A. Saldaña, W. C. Fricker, W. O. Johnson, E. J. Hinckley, F. H. Johnson, J. R. Loubierl, Roman Romanant, Luis Guillermety, B. W. Wickes, twelve good and lawful men, chosen from the body of the district of Porto Rico.

Thereupon Francis H. Dexter, attorney for the defendant, retires from the Court Room.

The witnesses for the plaintiff are called in, sworn, and give their testimony. And on default of any defense in the case the jury is

directed by the court to bring in a verdict for the plaintiff in the amount claimed in the complaint which said verdict is as follows:

"We, the jury, under the direction of the court, find for the plaintiff and assess his damages in the sum of $7,000.00, Seven Thousand Dollars, and interest from September 28, 1910, at 6% per annum.

P. M. McCORMICK, *Foreman.*"

21 Which said verdict is ordered to be filed and entered of record. And thereupon the jury is discharged from further consideration of the cause. And therefore it is considered that the plaintiff, Domingo Quintana, recover from the defendant, the Guardian Assurance Company, the sum of Seven Thousand Dollars and interest from September 28, 1910, at 6% per annum, and for which execution may issue.

Petition for Writ of Error and Supersedeas.

Filed Dec. 13, 1910.

DOMINGO QUINTANA, Plaintiff,
vs.
THE GUARDIAN ASSURANCE CO., Defendant.

The Guardian Assurance Company, defendant in the above entitled cause, feeling itself aggrieved by the verdict of the jury and the judgment entered on the third day of December, 1910, comes now and petitions the said Court for an order allowing it to prosecute a Writ of Error to the honorable, the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an Order be made fixing the amount of security that the defendant shall give and furnish upon said Writ of Error, and that, upon the giving of such security, all further proceedings in this Court be suspended and stayed until the determination of said Writ of Error by the Supreme Court of the United States, and your petitioner will ever pray, etc.

(Signed) WILLIS SWEET,
Attorney for Defendant.

22 *Assignment of Errors.*

Filed December 13, 1910.

DOMINGO QUINTANA, Plaintiff,
vs.
THE GUARDIAN ASSURANCE CO., Defendant.

Comes now the defendant in the above entitled cause and assigns as error herein the action of the Court in proceeding to a retrial of this cause on the third day of December, 1910, and in overruling the motion of defendant for a reasonable time within which to pre-

pare for the retrial of this cause, to which action of the Court, defendant, by its counsel, then and there duly excepted.

Wherefore defendant prays for a reversal of the judgment entered herein on the third day of December, 1910.

(Signed) WILLIS SWEET,
Attorney for Defendant.

Order Allowing Writ of Error.

Filed Dec. 13, 1910.

DOMINGO QUINTANA, Plaintiff,
vs.
THE GUARDIAN ASSURANCE CO., Defendant.

On this the tenth (10) day of December, 1910, the same being the same term at which the judgment in the above entitled cause was rendered, defendant presented its petition for Writ of Error and an Assignment of Errors for purposes of obtaining a Writ of Error to review the judgment entered in this cause and said defendant requested the Court to fix a supersedeas bond for such purpose. It is therefore,

Ordered that a Writ of Error be and hereby is allowed to
23 have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of suprsedeas bond on said Writ of Error be, and hereby is, fixed at $11,000.00 (Eleven thousand dollars).

(Signed) JOHN J. JENKINS, *Judge.*

Journal Entry of December 19, 1910.

734. Law.

DOMINGO QUINTANA
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THE GUARDIAN ASSURANCE CO.

Now comes Willis Sweet, Esq., representing the defendant herein, and tenders for the approval of the Court the supersedeas bond on Writ of Error, as per order hereinbefore entered.

Order Rejecting Bond.

The defendant in this action having appeared in court by its attorneys and made an application for the approval of the foregoing bond for the purpose of appeal to the Supreme Court of the United States and the plaintiff having also appeared and objected to the approval of the bond for the reason that it was no security in addition to the defendant itself, and for the further reason that a partner has no im-

plied authority to bind the firm by contract of guaranty or suretyship and the plaintiff's attorney having stated in open court that he had examined the articles of co-partnership and that the articles did not authorize a contract of guaranty or suretyship by the firm and that one of the partners was a non-resident of the United States, residing in Spain, the court sustained the objection of the plaintiff and refuses to approve the bond.

Dated December 17, 1910.

(Signed) JOHN J. JENKINS, *Judge.*

24 *Journal Entry of December* 21, 1910.

734. Law.

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE CO.

Now comes the Guardian Assurance Company, by its agents, Villar & Co., represented by Willis Sweet, Esq., and tenders a bond on writ of error herein, which said bond being duly examined by the Court, is approved on this, the 25th day of December, A. D. 1910. same to act as a supersedeas, that is to say:

In the District Court of the United States for Porto Rico, Sitting at San Juan.

DOMINGO QUINTANA, Plaintiff,
vs.
THE GUARDIAN ASSURANCE COMPANY, Defendant.

Bond on Writ of Error.

Know all men by these presents that we, The Guardian Assurance Company, as principal, and Carlos Conde and Miguel Cuetara, as sureties, are held and firmly bound unto Domingo Quintana, plaintiff in the above entitled action, in the sum of Eleven Thousand ($11,000) Dollars, to be paid to the said Domingo Quintana, his executors, heirs, administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the nineteenth day of December, 1910.

Whereas the above named defendant, The Guardian Assurance Company, has sued out a Writ of Error in the Supreme Court of the United States to reverse the judgment in the above entitled cause by the District Court of the United States for Porto Rico,

25 Now, therefore, the condition of this obligation is such that if the above named Guardian Assurance Company shall

prosecute said writ to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

GUARDIAN ASSURANCE COMPANY,
(Signed) By VILLAR & CO., *Agents.*

(Signed) C. CONDE, *Surety.*
MIGUEL CUETARA, *Surety.*

Carlos Conde, being duly sworn, upon his oath says that he is one of the sureties in the foregoing bond; that he is worth in visible assets in this jurisdiction more than the amount of the foregoing bond.

(Signed) C. CONDE.

Subscribed and sworn to before me this nineteenth day of December, 1910.

(Signed) RAFAEL GUILLERMETY,
Clerk U. S. Dist. Court for P. R.,
[SEAL.] By RICARDO NADAL, *Deputy.*

Miguel Cuetara, being duly sworn, upon his oath says: That he is one of the sureties mentioned in the foregoing bond; that he is worth in visible assets in this jurisdiction more than the amount of said bond.

(Signed) MIGUEL CUETARA.

Subscribed and sworn to before me this nineteenth day of December, 1910.

[SEAL.] (Signed) RAFAEL GUILLERMETY,
Clerk U. S. Dist. Court for P. R.,
By RICARDO NADAL, *Deputy.*

Approved this 21st day of December, A. D. 1910.

(Signed) JOHN J. JENKINS, *Judge.*

26 *Præcipe for Record on Appeal.*

Filed Jan. 9, 1911.

JANUARY SIXTH, 1911.

Mr. Rafael Guillermety, Clerk U. S. Court:

Please prepare for me at the earliest convenience of your office a certified transcript of the record in the case of Domingo Quintana versus The Guardian Assurance Company.

This transcript should include:

The Complaint.

The Answer.

Motion to produce books and papers.

The order made thereon.

All journal entries showing subsequent proceedings in both the first and second trials, but not including any proceedings in the contempt cases.

The instructions given by the court in the first trial.

Motion of defendant for time to prepare for second trial and order overruling same, showing exception taken thereto.

Verdict and judgment in second trial.

All journal entries since judgment.

Please have two carbon copies made of this transcript as I can use them.

(Signed) WILLIS SWEET.

Petition for Writ of Error.
Assignment of errors.
Bond and approval.
Order allowing writ.
Writ of error.
Citation.
Clerk's Certificate.

27 *Journal Entry of January 25, 1911.*

734. Law.

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE CO.

By consent of the respective attorneys for the parties in the above entitled cause, the hearing of the objections to the bill of Exceptions filed in this cause is set for to-morrow, Thursday, January 26, 1911, at 10 o'clock A. M.

Order Continuing until Next Term of Court the Allowance and Approval of Bill of Exceptions.

Filed April 4, 1911.

734. Law.

DOMINGO QUINTANA
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THE GUARDIAN ASSURANCE CO.

In view of the illness of the Judge of this Court it is hereby ordered that the allowance and approval of the Bill of Exceptions in the above entitled cause, heretofore under consideration, is hereby continued over to the approaching April term of this Court.

(Signed) JOHN J. JENKINS, *Judge.*

28 In the District Court of the United States for Porto Rico.

734. Law.

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE CO.

I, Rafael Guillermety, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing pages, numbered from 1 to 27 inclusive, to be a true and correct copy of certain proceedings in the above-entitled cause, as the same remain of record and on file in my office, as called for by the præcipe filed by counsel for the appellant, copy of which præcipe is attached hereto.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this 21st day of April, A. D. 1911.

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY,
Clerk U. S. District Court for Porto Rico.

29 [Endorsed:] No. 734. Law. In the District Court of the United States for Porto Rico. Domingo Quintana vs. The Guardian Assurance Co.

30 In the Supreme Court of the United States.

734. Law.

DOMINGO QUINTANA
vs.
THE GUARDIAN ASSURANCE COMPANY OF LONDON, LIMITED.

Writ of Error.

The President of the United States to the Honorable Judge of the District Court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, between Domingo Quintana, plaintiff, and The Guardian Assurance Company of London, Limted, defendant, a manifest error has happened to the great damage of the said Guardian Assurance Company, as by their petition appears. We being willing that error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States

Supreme Court, together with this writ, so that you have the same at Washington on or before the 15th day of March, next in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

31 Witness the Honorable Edward D. White, Chief Justice of the United States Supreme Court, this tenth day of January, A. D. 1911, and in the one hundred and thirty-fifth year of the Independence of the United States of America.

Allowed by—

JOHN J. JENKINS,
U. S. Judge for the District of Porto Rico.

Attest:

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY,
Clerk of the District Court of the United States for Porto Rico.

32 [Endorsed:] No. 734. Law. In the District Court of the United States for Porto Rico. Domingo Quintana vs. The Guardian Assurance Co. Writ of Error.

33 #1021.

Citation.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

In the United States Supreme Court.

To Domingo Quintana, Defendant, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court to be holden at the city of Washington on the 15th day of March next, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for Porto Rico, wherein the Guardian Assurance Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John J. Jenkins, Judge of the District Court of the United States for Porto Rico, this 10th day of January, in the year of our Lord one thousand nine hundred and ten,

and of the Independence of the United States the one hundred and thirty-fifth.

[Seal United States District Court for the District of Porto Rico.]

JOHN J. JENKINS,
J. S. Judge for Porto Rico.

34 Form No. 282.

Return on Service Writ.

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Citation on the therein-named Domingo Quintana by handing to and leaving a true and correct copy thereof with Domingo Quintana personally at San Juan in said District on the 10th day of January, A. D. 1911.

H. S. HUBBARD,
U. S. Marshal.
T. E. BURNETT, *Deputy.*

35 [Endorsed:] No. 734. Law. In the District Court of the United States for Porto Rico. Domingo Quintana vs. The Guardian Assurance Co. Citation. Marshal's Fees: 1 Service, $2.00; Expenses, —.

Endorsed on cover: File No. 22,652. Porto Rico D. C. U. S. Term No. 280. The Guardian Assurance Company of London, Limited, plaintiff in error, vs. Domingo Quintana. Filed May 3d, 1911. File No. 22,652.